SUPERIOR COURT
OF THE
STATE OF DELAWARE

E. SCOTT BRADLEY
JUDGE

SUSSEX COUNTY COURTHOUSE
1 The Circle, Suite 2
GEORGETOWN, DE 19947

August 31, 2005

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RE: Bailey v. Beebe Medical Center, Inc.
C.A. No. 03C-04-013

Date Submitted: May 17, 2005

Dear Counsel:

This is my decision on the post-trial motions in this medical negligence case that arose out of the death of Julie H. Bailey ("Julie"). The plaintiffs are Julie's second husband, Anthony W. Bailey, and the three children from her first marriage, Christopher B. Connaway, Shawn M. Connaway, and Elberon T. Connaway, III (the "Plaintiffs"). The defendants are Beebe Medical Center, Inc. ("BMC") and Lewes Convalescent Center, Inc. ("LCC"). BMC operates a hospital in Lewes, Delaware. LCC, a wholly-owned subsidiary of BMC, operates a convalescent center next to the hospital. I will sometimes hereinafter refer to BMC and LCC collectively as "Beebe."

Julie was a patient at both the hospital and convalescent center. She went to the hospital with an intestinal problem. Julie was treated and, after a stay of several days, was deemed well enough to be transferred to the convalescent center. Soon after arriving at the convalescent center, Julie,

who suffered from advanced Alzheimer's disease, walked unnoticed into the convalescent center's freezer. The LCC staff found Julie there hours later frozen to the floor in her own urine. Julie was taken back to the hospital where she died 24 days later.

The Plaintiffs filed estate and wrongful death actions against Beebe. Their actions included claims for both compensatory and punitive damages. The Plaintiffs' claim for punitive damages was based upon the theory that Beebe put profits ahead of patient care. Beebe filed a pre-trial motion seeking to divide the trial into three separate proceedings, the estate action, the four wrongful death actions, and the claim for punitive damages. The purpose of Beebe's motion was to isolate, as much as possible, the evidence supporting the Plaintiffs' claim for punitive damages.

The trial, as envisioned by Beebe, would have had three separate opening statements, evidence phases, closing statements, jury instructions, and jury deliberations. Beebe acknowledged that some of the evidence supporting the Plaintiffs' claim for punitive damages would overlap some of the other phases of the trial. I denied Beebe's motion and the case proceeded to trial. Beebe admitted at trial that it provided substandard care to Julie and that the Plaintiffs were entitled to compensatory damages. Beebe, however, vehemently denied that the Plaintiffs were entitled to punitive damages, promising to defend itself with every fiber in its corporate being. However, despite this vow, Beebe settled the Plaintiffs' claim for punitive damages shortly before BMC's president, Jeffrey Fried, was scheduled to testify in the Plaintiffs' case-in-chief. Beebe called no witnesses at the trial. The jury returned a $13,000,000 verdict in favor of the Plaintiffs as follows:

Estate of Julie H. Bailey	-	$ 4,000,000
Wrongful death claim of Anthony W. Bailey	-	$ 3,000,000
Wrongful death claim of Christopher B. Connaway	-	$ 2,000,000
Wrongful death claim of Shawn M. Connaway	-	$ 2,000,000
Wrongful death claim of Elberon T. Connaway, III	-	$ 2,000,000

Beebe filed a motion for a new trial or in the alternative remittitur. The Plaintiffs filed motions for costs and interest on the judgment.

Beebe's Motion for a New Trial

Beebe raises three arguments in support of its motion for a new trial. One, Beebe argues that the verdicts are shocking on their face. Two, Beebe argues that the verdicts are out of proportion to other large personal injury verdicts. Three, Beebe argues that verdicts were the result of the allegedly unduly prejudicial evidence supporting the Plaintiffs' claim for punitive damages.

Background

Julie was, at the time of her admission to the hospital, 62-years-old and suffering from advanced Alzheimer's disease. She had the mind of a two-year-old. Soon after arriving at the convalescent center, Julie left her room and walked unnoticed into the convalescent center's freezer. She spent approximately four hours locked in the freezer. When found by the LCC staff, Julie was moaning faintly and frozen to the floor in her own urine. It took three people to get her off of the floor.

Julie was taken to BMC's emergency room and treated for extreme hypothermia and frostbite to her feet, hands, fingers, face, lips, neck, shoulder and back. On five separate occasions BMC did not give pain medication to Julie prior to hydrotherapy treatment for her frostbitten hands. Finally, 24 days after being locked in the freezer, Julie died of a pulmonary embolism. In other words, she died by suffocation. One of the Plaintiffs' experts, Kenneth C. Fischer, M.D., testified that Julie, despite having the mind of a two-year-old, would have endured excruciating pain during the last 24 days of her life. Beebe, in its brief, admits this, stating, "To be sure, the evidence showed that Julie Bailey endured great physical pain and probably significant emotional pain between December 28,

2002 and January 21, 2003."

The testimony of Julie's husband and her three children was powerful and moving. Julie was, by all accounts, a wonderful wife and mother whose illness did not in any way diminish the way her husband and children felt about her. There is no doubt that they were devastated both by the circumstances of Julie's last 24 days of life and by her death and that their lives will forever be adversely affected by these events. They had to endure the uncertainty of not knowing for hours where Julie was until she was found locked in the convalescent center's freezer. They had to come to grips with the suffering that Julie endured while she was locked in the freezer. They had to consider what they might have to do if Julie was brain-damaged. They had to observe Julie's injuries and watch undergo her painful medical treatments. They had to endure the horrific manner in which Julie died. They had to deal with the fact that BMC's staff dropped Julie on the floor after she died, causing damage to her face. They will have to deal with never being able to see Julie again. Beebe, in its brief, admits the extent of the injuries suffered by Julie's husband and her children, stating, when referring to Julie's husband, "To be sure, his mental anguish is real and it has a value." When referring to Julie's children, Beebe states, "Clearly each of Julie Bailey's sons have been impacted by her tragic and unnecessary death."

Law

The law on the standard of review of jury verdicts is well-settled. I summarized it as follows in McCredie v. Howard, 2004 WL 1790120 (Del. Super.):

> "It is well established in Delaware that a jury verdict is presumed to be correct and just." *Storey v. Castner*, 314 A.2d 187, 193 (Del. 1973), *citing Lacey v. Beck*, 161 A.2d 579 (Del.Super.Ct.1960). Delaware courts traditionally afford great deference to jury verdicts, *Morris v. Maternity and Gynecology Associates, P.A.*, 2001 WL 1729133, at

> *2 (Del.Super.Ct.) *Citing Young v. Frase,* 702 A.2d 1234, 1236 (Del. 1997). On a Motion for a New Trial, this Court will not disturb a jury verdict as excessive "unless it is so clear as to indicate that it was the result of passion, prejudice, partiality, or corruption; or that it was manifestly the result of disregard of the evidence or applicable rules of law." *Storey,* 314 A.2d at 193, *citing Riegel v. Aastad,* 272 A.2d 715, 717-718 (Del.1970). It follows that "[a] verdict should not be set aside unless it is so grossly excessive as to shock the Court's conscience and sense of justice and unless the injustice of allowing the verdict to Stand is clear." *Id., citing Riegel v. Aastad*, 272 A.2d at 718; *Bennett v. Barber*, 79 A.2d 363 (Del.1951). Furthermore, this Court will not set aside a verdict simply because the Court perceives it to be excessive. It will only set aside a verdict where, "under the attendant facts, a grossly excessive verdict is clearly manifest." *Id., citing Lacey*, 161 A.2d at 581. Thus, very substantial awards have been upheld where the circumstances of the injuries warrant such an award. *Morris,* 2001 WL at *2, *citing Delaware Electric Co-Op, Inc. V. Duphily*, 703 A.2d 1202, 1210-1211 (Del.1997). The Delaware Supreme Court has further recognized "that it would be remiss in its duties to invade an area within the exclusive province of the jury where any margin for reasonable difference of opinion exists in the matter of a verdict." *Storey,* 314 A.2d at 193, *citing Burns v. Delaware Coca-Cola Bottling Co.*, 224 A.2d 255, 258 (Del. Super.Ct.1966). Moreover, remittitur should not be granted unless the award "is so out of proportion with the injures as to shock the Court's conscience and sense of justice." *Riegel*, 27 A.2d at 717-718.

Beebe argues that the verdicts are shocking on their face because the amounts awarded are, according to Beebe, out of proportion to the injuries sustained by Julie and her husband and children. I strongly disagree with Beebe's argument. Indeed, I think that the verdicts are, quite frankly, unremarkable given the nature and extent of the Plaintiffs' injuries. Julie's last days were, as a result of Beebe's extraordinary incompetence, absolutely horrific. I simply cannot imagine how horrible it must have been for Julie to have been locked in the freezer for four hours, to have been frozen to the floor in her own urine, to have nearly frozen to death, to have to be pried off the floor by three people, to have suffered severe frostbite to her face, fingers, hands and feet, to have painful physical therapy for her frostbitten hands without pain medication, and then to have died by

suffocation. The fact that Julie had the mind of a two-year-old only makes all of this that much worse. She was, according to the unchallenged expert medical testimony, able to feel the pain of all of this, yet unable to fully comprehend what was happening to her or to help herself. There is nothing at all about the jury's verdict for the Estate of Julie H. Bailey that shocks me. I find that it is overwhelmingly supported by the evidence.

I feel the same way about the jury's verdicts for Julie's husband and her three children. They had to live through Julie's 24 day march to death and will have to live with the memory of that and her loss for the rest of their lives. It is a gross understatement to say that they were devastated by all of this and will forever be affected horribly by it. Again, there is nothing at all about the jury's verdicts for them that shocks me. I find that they are also overwhelmingly supported by the evidence.

Beebe next argues that the jury's verdicts are shocking because they are, according to Beebe, out of proportion to the verdicts in other large personal injury cases.[1] I have summarized these cases below:

Case	Victim	Spouse/Parent
Ellenberger v. Van Vorst	$6,800,000	$1,900,000
McNally v. Eckman	$2,900,000	$ 325,000
McCredie v. Howard	$4,000,000	$1,000,000
Esry v. St. Francis Hosp., Inc	$1,740,000	$ N/A
Rowlands v.Lai	$2,000,000	$ N/A
Caldwell v. White	$2,000,000	$ 500,000
Ventura v. Beebe Medical Center	$ 700,000	$5,950,000

[1] *Ellenberger v. Van Vorst, 1991 WL 113582 (Del.Super.)*; *McNally v. Eckman*, 466 A.2d 363 (Del.1983); *McCredie v. Howard*, 2004 WL 1790120 (Del.Super.); *Esry v. St. Francis Hospital, Inc.*, 2002 WL 558878 (Del.Super.); *Rowlands v. Lai*, 2000 WL 706793 (Del.Super.); *Caldwell v. White,* C.A. No.: 03C-08-166 (Slights, J.); *Ventura v. Beebe Medical Center, Et al.*, C.A. No.: 00C-12-033 (Graves, J.)

	Victim	Spouse/Parent
Average	$2,877,143	$1,935,000
High	$6,800,000	$5,950,000
Low	$ 700,000	$ 325,000

I agree with Beebe that when determining if a jury verdict is shocking, it is somewhat helpful to look at jury verdicts in other similar cases. However, I do not think that it is appropriate to put too much weight on this type of analysis for several reasons. One, it is hard to find other cases that are factually similar enough to Julie's case so that the comparison can be meaningful. None of the cases cited by Beebe are at all factually similar to Julie's case. About the only thing that you can say about them and Julie's case is that they all involved victims who suffered severe injuries. You certainly cannot begin to equate a particular injury with a certain dollar amount of damages. The cases are simply too few in number and too factually different to allow you to do this. Two, Beebe's argument presumes that the cases it cited set the standard by which all other cases are to be judged. I do not think that this is analytically correct. The cases cited by Beebe just came before the verdicts in Julie's case. That certainly does not make them the standard by which to judge all verdicts that follow. Who is to say which verdict is a better reflection of the victim's injuries? I think, at best, all that such a comparison can tell you is whether or not you are, so to speak, in the ballpark or not and, given the test for setting aside a jury's verdict, it is a rather large ballpark.

Nevertheless, I have compared the verdicts in Julie's case to the verdicts in the cases cited by Beebe and, after doing so, I don't agree with the conclusions drawn by Beebe. The damages awarded to the victims in Beebe's cases range from $700,000 to $6,800,000. The average is $2,877,143. The damages awarded to the spouses and/or parents of the victims in Beebe's cases range from $325,000 to $5,950,000. The average is $1,935,000. The jury's verdicts for Julie's

estate and her husband and children are below the highest verdict, above the lowest verdict, and somewhat higher than the average of all the verdicts in Beebe's cases. I note that the *Ellenberger* and *McNally* verdicts were from 1988 and 1983, respectively, and that if they were adjusted for inflation, the verdicts in Julie's case would certainly be closer to the average of all the verdicts. The verdict for the deceased child in *Ventura* was relatively low because the child suffered from flu-like symptoms and then became unconscious before dying, suggesting that the jury concluded that the child did not suffer much. The fact that the verdicts in Julie's case are somewhat above the average of the verdicts in Beebe's cases does not shock me at all. The verdicts in Julie's case are still substantially lower than the highest verdicts in Beebe's cases. Quite simply, the verdicts in Julie's case are well within the ballpark. Moreover, I strongly believe that the injuries suffered by Julie and her husband and children are exceptional. It has to be the rare case where an Alzheimer's patient is locked in a freezer for four hours, frozen to the floor in her own urine, nearly frozen to death, sustains severe frostbite, is repeatedly subjected to negligent medical care over a 24-day period of time, dies by suffocation, and then has her lifeless body dropped on the floor, causing further damage. Given this, I do not think that the jury's verdicts in Julie's case suffer at all by comparison to other verdicts.

Beebe lastly argues that the jury's verdicts on compensatory damages were based on, according to Beebe, the unfairly prejudicial and inflammatory evidence offered by the Plaintiffs to prove their claim for punitive damages. This argument only reflects Beebe's failure to appreciate the Plaintiffs' strong case for compensatory damages and, ironically, the Plaintiffs' strong case for punitive damages. The Plaintiffs' claim for punitive damages was based on the theory that Beebe put money ahead of patient care with regard to LCC. To prove this the Plaintiffs offered evidence

showing that the hospital makes lots of money, while the convalescent center loses lots of money, and that Beebe invested in money-making equipment for the hospital, but did make even modest investments in the convalescent center, which was old and needed remodeling. The Plaintiffs also offered evidence showing that Beebe knew that it could not properly care for Alzheimer patients because, on a number of occasions, Alzheimer patients had left the convalescent center and were found walking around both the hospital grounds and town and, despite this, BMC continued to send Alzheimer patients to the convalescent center and LCC continued to accept them. This was extraordinarily powerful evidence and it stood unrebutted by Beebe when the jury got the case. I told the jurors during the trial that the Plaintiffs' claim for punitive damages was no longer before them. I gave the jury an instruction on compensatory damages and a limiting instruction on certain other evidence that it had heard. I also gave the jury instructions stating that its verdicts were not to be motivated by anger towards Beebe or by sympathy for the Plaintiffs. There is nothing at all unusual about asking jurors to not consider evidence that they had heard, or to only consider it for a limited purpose. We ask jurors to do this in virtually every trial and they do it.

I have no doubt that the jury was able to follow my instructions and ignore the evidence supporting the Plaintiffs' claim for punitive damages because, as I have stated many times in this decision, the evidence wholly supports the jury's verdicts on compensatory damages and also because the jury's verdicts did not enter stratospheric levels, which is what would have happened if the jury had been motivated by the Plaintiffs' evidence on punitive damages. I certainly agree with Beebe that the Plaintiffs' evidence on punitive damages was persuasive and that it put Beebe in a bad light. However, it is the very damning nature of this evidence, combined with the Plaintiffs' strong evidence for compensatory damages, that proves that the jury's verdicts were not improperly

motivated. I have no doubt at all that if the jury had entertained and accepted the Plaintiffs' theory on punitive damages that it would have awarded the Plaintiffs $20,000,000 in punitive damages alone. The Plaintiffs' evidence on punitive damages was simply that powerful. To think that Beebe, a financially successful hospital, would continue to send Alzheimer patients to a convalescent center that Beebe controlled and underfunded and was known to Beebe to not be able to properly care for such patients is not a pleasant thought to entertain, but that is what the Plaintiffs' evidence showed. The absence of an enormous award reflects the jury's ability to properly consider the evidence before it and to reach the appropriate result. It is somewhat ironic to me that the powerful nature of the Plaintiffs' evidence on punitive damages proves the exact opposite point that Beebe is trying to make, but that is what it does do. Beebe simply does not appreciate how much pain, suffering and anguish that it inflicted on Julie and her husband and children and how greedy and uncaring that it appeared to be in this case. If the jury had considered the evidence for both compensatory and punitive damages, as Beebe says it did, then I would have not been shocked at all by a jury verdict well over of $30,000,000. That didn't happen because the jury was not improperly motivated.

Beebe cited the following statement from a News Journal article as evidence that the jury was improperly motivated and that it had considered the case as a whole and not individually.

> Jurors said the case seemed pretty clear-cut from the beginning, and they thought the $13,000,000.00 award was fair for what the family - Bailey's husband and three sons - had to endure.
>
> "All the evidence pointed to how they were at fault," said Steward Lindland, of Delmar. "Nobody disagreed on that."
>
> What took some time to figure out - about three hours - was what amount to award the family. "How do you put a price on someone's life?" Lindland said.

I fail to see Beebe's argument. These statements merely reflects the jury's efforts to

compensate Julie and her family for what they had to "endure," which was the basis for the Plaintiffs' claim for compensatory damages. There was no mention at all of the evidence supporting the Plaintiffs' claim for punitive damages. The absence of this undermines Beebe's argument and proves that the jury's verdicts were to just compensate Julie and her family for their injuries and not to punish Beebe.

Beebe's motion for a new trial or in the alternative remittitur is denied for the foregoing reasons.

The Plaintiffs' Motion for Expert Witness Fees and Costs

The Plaintiffs seek to recover their expert witness fees, deposition transcript fees and court costs. Expert witness fees may be taxed as costs against the unsuccessful party.[2] 10 *Del. C.* § 8906 states:

> "The fees for witnesses testifying as experts or in the capacity of professionals in cases in the Superior Court, the Court of Common Pleas and the Court of Chancery, within this State, shall be fixed by the court in its discretion, and such fees so fixed shall be taxed as part of the costs in each case and shall be collected and paid as other witness fees are now collected and paid."

However, "witness fees allowed under 10 *Del. C.* § 8906 should be limited to time necessarily spent in attendance upon the court for the purpose of testifying."[3] The Delaware Supreme Court further narrowed the application of 10 *Del. C.* § 8906 by finding that it "does not include time spent in listening to other witnesses for 'orientation,' or in consulting and advising with a party or counsel or other witness during trial."[4] Attendance includes "a reasonable time (a) traveling to and from the

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[2] 10 Del. C. § 8906, *Stevenson v. Henning*, 268 A.2d 872 (Del. 1972).

[3] *State v. 0.0673 Acres of Land*, 224 A.2d 598, 602 (1966).

[4] *Id.*

courthouse, (b) waiting in the courthouse for the call to the witness stand, and ©) testifying."[5] In *Sliwinski v. Duncan*, 608 A.2d 730, (Table) 1992 WL 21132 at *3 (Del.), the Supreme Court said:

> "when a physician testifies as an expert, for three hours or less, a minimum witness fee should be allowed based upon a flat amount for a one-half day interruption in the physician's usual schedule. Such minimum allowance would usually be adequate to cover the transportation and waiting time for a local physician and would result in the uniform treatment of many of the witness fees submitted by physicians."

There is no clear formula to determine reasonable expert fees. This Court in *Dunkle v. Prettyman*, Del. Super. Ct., Civ.A. 99C-10-265, Slights, J. (May 1, 2002), referred to a 1995 study of the Delaware Medico-Legal Affairs Committee and found a reasonable range of fees for court appearances for experts was between $1300 to $1800 per half-day. Furthermore, the Delaware Supreme Court affirmed a decision of the Superior Court wherein the Superior Court ruled that 10 *Del. C.* § 8906 does not permit an award of the "costs of services provided in advance of time expended in conjunction with actually attending the trial for the purpose of testifying."[6]

This Court found that although reasonable and ordinary traveling expenses of an expert may be reimbursed, "costs should not be accessed [sic] at the expert's hourly rate."[7] An award for travel time at one-half or less than one-half of an expert's hourly rate is common.[8]

A. Expert Witnesses

1. Lance R. Youles ("Youles")

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[5] *State ex rel. State Hwy. Dep't v. Concord Heights*, 238 A.2d 837, 838-839 (Del. 1968).

[6] *Sliwinski v. Duncan*, 608 A.2d 730 (Table), 1992 WL 21132 (Del.), *citing Connolly, et al. v. Labowitz, et al*., 1987 WL 28316 (Del.Super.Ct.).

[7] *Dunning v. Barnes*, 2002 WL 31814525, at *4, (Del.Super.Ct.), *citing Burns v. Scott*, 1998 Del.Super.Ct. LEXIS 130.

[8] *See, e.g., Midcap v. Sears Roebock & Co*., 2004 WL 1588343 (Del.Super.Ct.)

The Plaintiffs seek $8,574.06 for Youles' expert testimony. This amount is broken down as follows:

Trial Testimony	8 hours @ $250 per hour =	$2,000.00
Trial Preparation	16 hours @ $165 per hour =	$2,640.00
Travel	15 hours @ $165 per hour =	$2,475.00
Travel Expenses		$1,459.06

Beebe argues that this is an unreasonable amount to tax as costs. I agree. Youles billed Plaintiffs for eight hours of trial appearance time, while he testified for only three hours and six minutes.[9] At a rate of $250 per hour, the fee for Youles' three hours and six minutes of testimony is $775.[10] Youles charged Plaintiffs $2,475 for his travel time, which represented 15 hours of travel at a rate of $165 per hour. This rate is not in accordance with our prior decisions. Youles will be allowed an hourly travel rate that is one-half of his trial testimony rate. At a rate of $125 per hour, Youles will receive $1,875 for his travel time. Also in accordance with *Sliwinski,* Beebe will not be responsible for the time Youles spent preparing for trial. The Plaintiffs may recover $1,459.06 for Youles' travel expenses. The total amount that Plaintiffs may recover as costs is $4,109.06.

2. Kenneth C. Fisher, M.D. ("Fisher")

The Plaintiffs seek $13,440.14 for Fisher's expert testimony. This amount is broken down as follows:

Trial Testimony	$12,500.00
Trial Expenses	$ 829.14
Miscellaneous Expenses	$ 111.00

[9] This information was taken from the notes of the Court Clerk.

[10] Without any information regarding the time Mr. Youles spent waiting to testify or traveling to and from the courthouse, the Court is forced to make a decision based upon the information before it. As such, Mr. Youles will only receive credit for the time he spent on the witness stand.

Based upon the guidelines in *Dunkle*, it is unreasonable to tax as costs against Beebe an amount that is more than seven times the range of fees allowed for court appearances for medical experts. Fisher testified for four hours and thirty-six minutes.[11] He charged the Plaintiffs $12,500 for this testimony. The large fee represents, according to the Plaintiffs, the two and one-half days of work that Fisher had to cancel to attend the trial. This was based upon the fact that the Plaintiffs did not anticipate that jury selection would take two days. This amount is unreasonable. Fisher will be allowed $1600 per half- day or $400 per hour, which is well within the guidelines in *Dunkle*.[12] This allows the Plaintiffs to recover $1,840.12. The Plaintiffs also seek $940.14 in expenses for Fisher. Unlike for Youles, the Plaintiffs have provided me with virtually no documentation for these expenses. Thus, Fisher's expenses will be limited to those that were documented. Fisher paid $230.56 for his rental car and $54.75 for meals, totaling $285.31. Fisher's parking ticket is not a valid expense and will not be included. The total amount that Plaintiffs may recover as costs is $2,125.43.

B. Court Reporter Fees

The Plaintiffs seek to recover the cost of nine deposition transcripts pursuant to Superior Court Civil Rule 54(d). However, Rule 54(d) permits only the cost of the transcription of the Court's

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[11] This information was obtained from the notes of the Court Clerk.

[12] Dr. Fisher did not break down his fees into an hourly rate or daily rate. By charging $12,500 for two and one-half days, the daily rate would be $5,000 or $625 per hour. This amount is not within the suggested range established in *Dunkle*. Since Dr. Fisher testified for four hours and thirty-six minutes, the Court will credit him with that amount. There was no mention of time he spent waiting or time he spent traveling to and from the courthouse so those will not be included in the recovery. To add in any time for waiting or traveling to the courthouse would not only amount to speculation on the part of the Court, but would be arbitrary.

copy of a deposition introduced into evidence. It is my interpretation of the rule that the depositions must actually be used at trial and not merely submitted to the Court at the end of the trial. The Plaintiffs marked nine depositions transcripts as exhibits, but only used three at trial (Owen Schwartz, Jeffrey Fried and Noreen Beam). Thus, the cost of the three actually used is recoverable. The total amount that Plaintiffs may recover for deposition transcripts is $1,406.30.

C. Court Costs

The Plaintiffs seek to recover $1,825.00 for actual court costs. Beebe does not deny that the Plaintiffs are entitled to recover their court costs. However, Beebe does argue that the Plaintiffs are not entitled to *pro hac vice* admission fees as part of their court costs. Beebe is correct. This Court previously stated that "[t]hese fees are not permissible since they could have been avoided by the Plaintiff selecting a Delaware attorney to bring this litigation. Since the choice of counsel was solely that of the Plaintiffs, it would be unfair to force Beebe to bear these costs."[13] As such, Plaintiffs' *pro hac vice* fees will be subtracted from their court costs. Plaintiffs may recover $325.00 in court costs.

D. Interest

The Plaintiff request that the legal rate of interest be applied to their court costs, which total $7,965.79. I take judicial notice that the applicable interest rate that was in effect when the judgment was rendered was 3.5%. Therefore, the legal rate of interest to be applied is 8.5%. The per diem interest charge is $1.86 from March 16, 2005.

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[13] *Christiana Marine Services Corp. v. Texaco Fuel and Marine Marketing Inc.*, 2004 WL 42611, at *8.

The Plaintiff's Motion for the Addition of Interest to the Final Judgment

The Plaintiffs seek the addition of interest to the final judgment. In support of their argument, Plaintiffs cite 6 *Del. C.* § 2301(d), which states:

> "In any tort action for compensatory damages in the Superior Court or the Court of Common Pleas seeking monetary relief for bodily injuries, death or property damage, interest shall be added to any final judgment entered for damages awarded, calculated at the rate established in subsection (a) of this section, commencing from the date of injury, provided that prior to trial the plaintiff had extended to defendant a written settlement demand valid for a minimum of 30 days in an amount less than the amount of damages upon which judgment was entered."

The Plaintiffs have successfully met all of the requirements of 6 *Del. C.* § 2301(d). The Plaintiffs made a written demand to Beebe to settle this case on September 23, 2003. The demand remained open for more than 30 days. The Plaintiffs offered to settle this case for $10,000,000, which was less than the amount of the jury's verdicts. Beebe does not contest the fact that the Plaintiffs have met all of the requirements of 6 *Del. C.* § 2301(d). However, Beebe does contest the interest rate requested by the Plaintiffs. The Plaintiffs argue that the proper interest rate to apply to the final judgment is 6.25%, while Beebe contends that the proper interest rate is 5.75%. 6 Del. C. § 2301(a) states, "...Where there is no expressed contract rate, the legal rate of interest shall be 5% over the Federal Reserve discount rate including any surcharge as of the time from which the interest is due..."[14] Beebe argues that the Plaintiffs have used the wrong interest rate. I reviewed the Federal Reserve Bank Discount Window & Payment System information for the applicable period of time and have concluded that Beebe is correct. The Federal Reserve Discount Rate was .75% on December 28, 2002. Accordingly, the proper statutory rate of interest to apply to the final judgment is 5.75%. The per diem for each award is as follows from December 28, 2002:

[14] 6 Del. C. § 2301(a).

Estate of Julie H. Bailey:	$ 630.14
Anthony W. Bailey:	472.60
Christopher B. Connaway:	315.07
Shawn M. Connaway:	315.07
Elberon T. Connaway, III:	315.07
	$ 2,047.95

The Plaintiffs' motions for expert witness fees, costs and interest on the final judgment are granted to the extent allowed herein.

IT IS SO ORDERED.

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JUDGE E. SCOTT BRADLEY

cc: Prothonotary